

to apply for naturalization, the director shall instruct the applicant concerning the requirements for naturalization and provide him or her with the necessary forms.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted special immigrant status under section 101(a)(27)(K) of the Act is outside the United States, the principal alien may file Form I-824, Application for Action on an Approved Application or Petition, with the office which approved the original application.

(e) *Deportation provisions of section 241.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the deportation provisions of section 241 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 241 of the Act. The Service shall obtain a current Form DD-214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

(f) *Rescission proceedings under section 246 of the Act.* If the Service determines that a military special immigrant under section 101(a)(27)(K) of the Act was not in fact eligible for adjustment of status, the Service may pursue rescission proceedings under section 246 of the Act.

[57 FR 33862, July 31, 1992, as amended at 58 FR 50836, Sept. 29, 1993]

§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.

(a) *Principal applicant status.* All nationals of the People's Republic of China who qualify under the provisions of paragraph (b) of this section may apply for adjustment of status as principals in their own right, regardless of age or marital status. Nationals of other countries who meet the requirements of paragraphs (b) and (c) of this

section may apply for adjustment of status as qualified family members.

(b) *Aliens eligible to apply for adjustment.* An alien is eligible to apply for adjustment of status under the provisions of Public Law 102–404, if the alien:

(1) Is a national of the People's Republic of China or a qualified family member of an eligible national of the People's Republic of China;

(2) Was in the United States at some time between June 5, 1989, and April 11, 1990, inclusive, or would have been in the United States during this time period except for a brief, casual, and innocent departure from this country;

(3) Has resided continuously in the United States since April 11, 1990, except for brief, casual, and innocent absences;

(4) Was not physically present in the People's Republic of China for more than a cumulative total of 90 days between April 11, 1990, and October 9, 1992;

(5) Is admissible to the United States as an immigrant, unless the basis for excludability has been waived;

(6) Establishes eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

(7) Properly files an application for adjustment of status under section 245 of the Act.

(c) *Qualified family member who is not a national of the People's Republic of China.* A qualified family member within the meaning of this section includes the spouse, child, son, or daughter of a national of the People's Republic of China who is eligible for benefits under the provisions of paragraph (b) of this section, provided that:

(1) He or she qualified as the spouse or child (as defined in section 101(b)(1) of the Act) of an eligible national of the People's Republic of China as of April 11, 1990; and

(2) The qualifying relationship continues to exist, or the family member is a son or daughter of an eligible national of the People's Republic of China and the family member was unmarried and under the age of 21 on April 11, 1990.

(d) *Waivers of excludability under section 212(a).* An applicant for the benefits of the adjustment of status provisions of Public Law 102-404 automatically exempted from compliance with the requirements of section 212(a)(5) and 212(a)(7)(A) of the Act. A Public Law 102-404 applicant may also apply for one or more waivers of excludability under section 212(a) of the Act, except for excludability under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

(e) *Waiver of the two-year foreign residence requirement of section 212(e).* An applicant for the benefits of the adjustment of status provisions of Public Law 102-404 is automatically exempted from compliance with the two-year foreign residence requirement of section 212(e) of the Act.

(f) *Waiver of section 245(c) of the Act.* Public Law 102-404 provides that the provisions of section 245(c) of the Act shall not apply to persons applying for the adjustment of status benefits of Public Law 102-404.

(g) *Application.* Each applicant must file an application for adjustment of status on Form I-485, Application to Register Permanent Residence or Adjust Status, accompanied by the prescribed fee, and the supporting documents specified on the instructions to Form I-485 and described in §245.2. Secondary evidence may be submitted if the applicant is unable to obtain the required primary evidence. Applicants who are nationals of the People's Republic of China should complete Part 2 of Form I-485 by checking box "h—other" and writing "CSPA—Principal" next to that block. Applicants who are not nationals of the People's Republic of China should complete Part 2 of Form I-485 by checking box "h—other" and writing "CSPA—Qualified Family Member" next to that block. Each applicant for the benefits of Public Law 102-404 must also submit evidence of eligibility for the adjustment of status benefits of Public Law 102-404:

(1) A photocopy of all pages of the applicant's most recent passport or an explanation of why the applicant does not have a passport;

(2) An attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on April 11, 1990;

(ii) The date of each departure the applicant made from the United States since that arrival (if the applicant did not depart the United States after the initial date of arrival, the applicant should write "I was in the United States on April 11, 1990, and I have not departed the United States since April 11, 1990");

(iii) The reason for each departure; and

(iv) The date of each return to the United States.

(3) An attachment on a plain piece of paper showing:

(i) The date the applicant arrived in the People's Republic of China; and

(ii) The date the applicant left the People's Republic of China for each trip the applicant made to the People's Republic of China between April 11, 1990, and October 9, 1992 (if the applicant did not travel to the People's Republic of China, the applicant should write "I was not in the People's Republic of China between April 11, 1990, and October 9, 1992");

(4) A copy of evidence showing that the applicant was found eligible for benefits under E.O. 12711, such as deferred enforced departure (DED), employment authorization, and/or waiver of the two-year foreign residence requirement, if the applicant previously applied for benefits under E.O. 12711; and

(5) Primary or secondary evidence of a qualifying family relationship to an eligible national of the People's Republic of China, such as a birth or marriage certificate, if the applicant is a qualified family member who is not a national of the People's Republic of China.

(h) *Secondary evidence.* If any required primary evidence is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish the birth, marriage, or other event. Documentary evidence establishing that primary evidence is unavailable need

not accompany secondary evidence of birth or marriage in the People's Republic of China.

(i) *Filing.* The application period begins on July 1, 1993. To benefit from the provisions of Public Law 102-404 (the Chinese Student Protection Act of 1992), an alien must properly file an application for adjustment of status under section 245 of the Act on or before June 30, 1994. All applications for the benefits of Public Law 102-404 must be submitted by mail to the Service Center having jurisdiction over the applicant's place of residence in the United States. Pursuant to the deactivation clause of Public Law 102-404, if the President of the United States determines and certifies to Congress before July 1, 1993, that conditions in the People's Republic of China permit persons covered by Public Law 102-404 to safely return to the People's Republic of China, no applications for lawful permanent resident status under Public Law 102-404 will be processed or granted.

(j) *Immigrant classification and assignment of priority date.* Public Law 102-404 provides eligible applicants with automatic classifications as immigrants under section 203(b)(3)(A)(i) of the Act. No immigrant visa petition is required and applicants need not meet the usual requirements for classification as skilled workers. The applicant's priority date shall be the date his or her application for adjustment of status under Public Law 102-404 is properly filed with the Service.

(k) *Effect of immigrant visa number limitations.* Eligible Public Law 102-404 applicants are exempt from the per-country immigrant visa number limitations of section 202(a)(2) of the Act. Eligible Public Law 102-404 applicants may file an application for adjustment of status under Public Law 102-404 without regard to immigrant visa number limitations of sections 202(a)(2) and 203(b)(3)(A)(i) of the Act. However, the adjustment of status application may not be approved and adjustment of status to that of a lawful permanent resident of the United States may not be granted until a visa number becomes available for the applicant under the worldwide allocation of immigrant visa numbers for employment-based aliens

under section 203(b)(3)(A)(i) of the Act. The applicant may request initial or continued employment authorization during this period by filing Form I-765, Application for Employment Authorization. If the applicant needs to travel outside the United States during this period, he or she may file a request for advance parole on Form I-131, Application for Travel Document.

(l) *Decision.* In the case of an application for adjustment of status filed pursuant to the provisions of Public Law 102-404, the authority conferred upon district directors in 8 CFR part 245 to accept and adjudicate an application for adjustment of status under section 245 of the Act is delegated exclusively to the service center director having jurisdiction over the applicant's place of residence in the United States. If the service center director transfers the application to the district director, authority to adjudicate an application for adjustment of status filed pursuant to the provisions of Public Law 102-404 lies with the district director having jurisdiction over the applicant's place of residence.

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Public Law 102-404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act. Persons who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status may request voluntary departure pursuant to 8 CFR part 242. Persons who have been granted voluntary departure may request employment authorization by filing

Form I-765, Application for Employment Authorization.

[58 FR 35838, July 1, 1993]

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103-317.

(a) *Eligibility.* Any alien who is included in the categories of restricted aliens under § 245.1(b) may apply for adjustment of status under section 245 of the Act if the alien:

(1) Is physically present in the United States;

(2) Is eligible for immigrant classification and has an immigrant visa number immediately available at the time of filing for adjustment of status;

(3) Is not excludable from the United States under any provision of section 212 of the Act, or all grounds for excludability have been waived;

(4) Properly files Form I-485, Application to Register Permanent Residence or Adjust Status on or after October 1, 1994, with the fee required for that application;

(5) Properly files Supplement A to Form I-485 on or after October 1, 1994;

(6) Pay an additional sum of five times the fee required for filing Form I-485, unless payment of the additional sum is waived under section 245(i) of the Act; and

(7) Will adjust status under section 245 of the Act to that of a lawful permanent resident of the United States on or after October 1, 1994, and before October 1, 1997.

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I-485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay an additional sum of five times the standard filing fee, unless at the time the application for adjustment of status is filed, the alien is:

(1) Unmarried and less than 17 years of age;

(2) The spouse of a legalized alien, qualifies for and has properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program, and submits a copy of his or her receipt or approval notice for filing Form I-817; or

(3) The child of a legalized alien, is unmarried and less than 21 years of age, qualifies for and has properly filed Form I-817, and submits a copy of his or her receipt or approval notice for filing Form I-817.

(c) *Application period.* An application for the adjustment of status benefits of section 245(i) of the Act may not be filed before October 1, 1994. An application for the adjustment of status benefits of section 245(i) of the Act cannot be granted on or after October 1, 1997. A prospective applicant who is seeking the benefits of section 245(i) of the Act must file the application sufficiently in advance of October 1, 1997, to ensure that it may be completed before that date.

(d) *Adjustment application filed on or after October 1, 1994, without Supplement A to Form I-485.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed on or after October 1, 1994, to request consideration under the provisions of section 245(i) of the Act, if it appears that the alien is not otherwise ineligible for adjustment of status. The applicant will be notified in writing of the intent to deny the adjustment of status application unless Supplement A to Form I-485 and any required additional sum is filed within thirty days of the date of the notice.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act shall also not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. If otherwise eligible for adjustment of status under the provisions of section 245(i) of the Act, the alien may file a new application for adjustment of status, accompanied by the required filing fee, Supplement A to Form I-485, and any additional sum required by section 245(i) of the Act.

[59 FR 51095, Oct. 7, 1994; 59 FR 53020, Oct. 20, 1994]